IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Revision No.2494 of 2004

Date of Decision: September 24, 2007

Harpal Singh .....Petitioner

Versus

Kasturi Lal and another .....Respondents

CORAM:- HON'BLE MR.JUSTICE S. D. ANAND

Present: Mr.Sandeep K.Wadhawan, Advocate for the petitioner.

Mr.Chetan Mittal, Advocate for respondent No.1.

S. D. ANAND, J.

1. The plea, preferred by the respondent-landlord, for ejectment of the petitioner from a show window in Booth No.5, Sector 23-C, Chandigarh (hereinafter referred to as "the tenanted portion") found favour with the learned Rent Controller. While allowing the rent petition, it was held by the learned Rent Controller that the petitioner is not a sub-tenant under respondent No.2 – Ashok Kumar and is a direct tenant under the respondent-landlord. The plea of the petitioner being in arrears of rent w.e.f. 1.6.1993 onwards was upheld.

2. The respondent-landlord pleaded at the trial as under.

3. He is owner and landlord of Booth No.5, Sector 23, Chandigarh which he had let out to respondent-Ashok Kumar on rent @ Rs.300/- per month. The tenanted premises included the aforementioned show window as well. Respondent-Ashok Kumar sublet that show window to the

petitioner without the written consent of the respondent-landlord. That subletting had been done for a valuable consideration and after the commencement of the East Punjab Urban Rent Restriction Act, 1949. Alleging non-payment of rent and subletting, the respondent-landlord sought ejectment of the petitioner and respondent-Ashok Kumar from the tenanted premises (it is in evidence otherwise that respondent-Ashok Kumar has already vacated the premises w.e.f. 17.6.1994).

4. Respondent-Ashok Kumar did not contest the petition by refraining from putting in appearance inspite of the effecting of service. Exparte proceedings were ordered against him at the trial.

5. The petitioner denied the averment that he was inducted as a sub-tenant of Ashok Kumar. The plea raised by him is that he had taken the show window from respondent-landlord himself on rent @ Rs.60/- per month excluding the electricity charges. That amount of rent was, later on, enhanced to Rs.125/- per month. It was denied that he is in arrears of rent. The averment, in the context, is that he had been initially paying the amount of rent to the respondent-landlord in cash and, thereafter, he had been sending money-orders, which were refused by the respondent-landlord.

6. The learned Rent Controller, as already noticed, held the petitioner to be a direct tenant under the respondent-landlord. However, the ejectment of the petitioner from the show window was ordered on a plea of his being in arrears of rent.

7. In appeal, the learned Appellate Authority reversed that part of the finding where the petitioner has been held to be direct tenant under the respondent-landlord and allowed the ejectment petition in toto.

8. The petitioner is in revision.

9. The learned counsel for the petitioner argued that though there is no documented material in the form of rent note or rent receipts to prove the direct tenancy of the petitioner under the respondent-landlord, the testimony on oath of RW1 to RW6 proves the plea raised by him.

10. The learned counsel for the respondent-landlord resisted the plea by arguing that the validity of the plea of sub-tenancy is evident from the very fact that there is material on file to prove that the entire tenanted premises constituted one unit, it had only one electricity connection and the petitioner-tenant has not been able to prove on file any acceptable evidence to the effect that he had been paying his share of the electricity to respondent-Ashok Kumar.

11. Concededly, it is not even the plea on behalf of the petitioner that the respondent-landlord had executed a rent note or that he had ever issued any rent receipts in his favour. The oral testimony of the RWs cannot be said to be sufficient to prove the plea of the petitioner. It may be noticed, at the very outset, that the petitioner had raised a precise plea that he paid the amount of rent to the respondent-landlord in cash upto 30.6.1974 and that, thereafter, he had been sending the amount of rent to the respondent-landlord through the money-orders. He did not examine any Postman in support of the averment that the respondent-landlord had been refusing to receive the money-orders. He also did not produce any evidence to prove that he had been paying his share of the electricity bill. As the tenanted premises constituted one unit, it had only one entrance. By the very nature of things, respondent-Ashok Kumar, in the absence of a proven stipulation to that effect, would not have agreed to the intrusion on his commercial privacy and exclusive possession of a tenanted premises by

allowing access to the petitioner to the show window from inside the shop. That fact, appreciated in the light of the conceded non-execution of any rent note or issuance of rent receipts by the respondent-landlord in favour of the petitioner, goes a long way to disprove the petitioner's plea of being a direct tenant under the respondent-landlord. There is plethora of law on the point that transactions like the creation of sub-tenancy are brought into being under the veil of secrecy. By the very nature of things, direct evidence in respect thereof would be very rarely forthcoming and the controversy of that nature shall have to be compulsively adjudicated upon on the basis of inferences culled out of the material available on the file.

12. In the light of foregoing discussion, I have no hesitation in affirming the findings recorded by the learned Appellate Authority which, apart from being relatable to the material obtaining on the file, are unassailable. Even otherwise, there is no irregularity or perversity in the exercise of judicial discretion by the learned Appellate Authority which may justify interference by this Court. The petition is held to be devoid of merit and is ordered to be dismissed.

(S. D. ANAND)
JUDGE

September 24, 2007
SRM

Note: Whether referred to reporter or not? Yes/No